

HUGHES • ELLZEY LLP

TELEPHONE
(713) 322-6387

2700 POST OAK BLVD., SUITE 1120
GALLERIA TOWER I
HOUSTON, TEXAS 77056
WWW.HUGHESELLZEY.COM

FACSIMILE
(888) 995-3335

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VIA CM/ECF

The Honorable Vince Chhabria
United States District Court, Northern District of California

Re: MDL 2843, *In Re: Facebook, Inc., Consumer Privacy User Profile Litigation*

Dear Judge Chhabria:

Pursuant to Pretrial Order No. 1, please consider this letter my combined response to all applications for lead counsel. Because hard-and-fast formal rules are scarce on the issue of MDL lead counsel, courts tend to seek guidance from predecessors, peers, and lawyers who have litigated other MDL proceedings. Courts tend to focus on factors such as MDL experience, cooperative tendencies in other MDLs, and a proven ability to finance the litigation – all factors that favor repeat players.

Studies have shown, for example, that repeat players have been more successful in *qui tam* litigation, that attorneys who regularly appear before the same appellate court have higher win rates than their opponents, and that judges are more likely to vote against lawyers who lack experience before their court. See David Freeman Engstrom, *Harnessing the Private Attorney General: Evidence from Qui Tam Litigation*, 112 Colum. L. Rev. 1244, 1258 (2012); Susan Brodie Haire et al., *Attorney Expertise, Litigant Success, and Judicial Decision Making in the U.S. Courts of Appeals*, 33 Law & Soc'y Rev. 667, 678, 681 (1999). I respectfully ask the Court to consider appointing lawyers like myself with the experience, skills, and desire to identify new solutions and perspectives to advance this Litigation.

I also write in support of my application for lead counsel, or other position of leadership possibly created by the Court in this MDL. (Doc. 51) My law firm, HUGHES ELLZEY, LLP, filed the only Texas case transferred to this Court for MDL proceedings.¹ I'm currently litigating other consumer class actions jointly and cooperatively with experienced plaintiff's counsel and nationally respected plaintiff's firms in several different states. See, e.g., *Leona Hunter v. Time Warner Cable Inc.*, No. 1:15-cv-06445-JPO-JLC (S.D.N.Y.); *Thomas Buchanan v. Sirius XM Radio, Inc.*, No. 3:17-cv-00728-D (N.D. Tex.); *Sara Diaz-Lebel v. TD Bank USA, N.A. and Target Corporation*, No. 0:17-cv-05110-MJD-BRT (D. Minn.).

¹ *Lodowski v. Facebook, Inc. et al*, 4:18-cv-00907 (S.D. Tex.).

Geographic diversity amongst attorneys in leadership positions is important, especially in this case, to ensure adequate representation of the equally geographically diverse class comprising over 80 million individuals located in all 50 states. Even a few of the experienced MDL lawyers seeking lead counsel positions in this MDL recognized the need for a diverse leadership group with energetic lawyers. *See, e.g.*, Application of Steve W. Berman (Doc. 51) (proposing to identify and ask the Court to approve a small slate of smart, energetic, and effective counsel); Application of Michael W. Sobol (Doc. 48) (the interests of the class may be served by appointing co-lead counsel); Application of Arthur M. Murray (Doc. 36) (the appointment of a small group of repeat players can lead to formulaic problem-solving...and lawyers with experience, skills, and desire will bring new solutions and perspectives to the case at bar).

I believe my experience, energy, and natural ability to cooperatively work with co-counsel qualify me for this position.

Respectfully Submitted,

HUGHES ELLZEY, LLP

/s/ W. Craft Hughes

W. Craft Hughes
2700 Post Oak Blvd., Ste. 1120
Galleria Tower I
Houston, TX 77056
Phone (713) 322-6387
Fax (888) 995-3335
craft@hughesellzey.com